

Suggested Recommendations from the Mercatus Group to the Advisory Committee Chairmen

The DEQ responses are listed in the subsections below each recommendation for your review.

1. The core business of this department is comprehensive environmental protection and related protection of public health and safety.

The core mission of DEQ is to perform this duty while also considering sound policies regarding employment and economic development. DEQ currently functions on a total budgetary authority amount of 152 million dollars for this fiscal year (FY10), and as of next year, *DEQ is planning to perform its mission without the need of any State General Fund dollars.*

2. The outcome for the Criminal Investigation Division is achieving compliance with the law. The measures for this division should show whether the incidence of crime is going up or down.

The best indicator to measure performance for the Criminal Investigation Division (CID) of the department is the number of criminal referrals to the District Attorney or United States Attorney for prosecution. This is also the base indicator used by EPA-CID, our Federal counterpart, in reporting the effectiveness of their program. The activities of DEQ-CID and that of its local, state and federal partners serve as a deterrent to environmental crime through making arrests and gathering evidence for successful prosecutions. There are no other state law enforcement agencies engaged in this specialized environmental criminal arena full-time.

3. Business and Community Outreach activities should be measured in terms of tangible improvement in environmental outcomes.

The Business and Community Outreach Division (BCOD) does measure its activities in tangible outcomes. These outcomes are designed to meet the totality of DEQ's mission of enforcement, education, empowerment, and ecological balance throughout the state. The metrics of services to stakeholders are cumulated in raw numbers by the department and then submitted to the Division of Administration (DOA) in percentage performance indicators. The mission of BCOD is to improve compliance among small businesses, municipalities/communities and non-governmental organizations by providing statewide educational outreach and technical assistance services in FY2010-2011. The current metrics designed to meet mission requirements and assist our stakeholders in working together to better achieve compliance are as follows: (1) municipalities implementing planned wastewater improvements to ultimately ensure compliance with the federal Clean Water Act using funds from the Municipal Facilities Revolving Loan Fund; (2) responses to requests by small businesses, municipalities and non-governmental organizations for compliance assistance within 10 business days; (3) responses by Ombudsman to complaints involving public participation and environmental justice within 5 business days; (4) EnviroSchool class

participants who demonstrate comprehension of the core subject matter; and (5) increase in Environmental Leadership program participants committed to voluntary pollution reduction beyond regulatory compliance.

4. Office of Compliance Surveillance/Enforcement: There is no indication of any prioritization of these efforts – while there is a significant amount of money involved (\$16 million)

In 2003, DEQ was mandated by the legislature in conjunction with EPA to develop and implement a Compliance Monitoring Strategy that provides an in-depth process to prioritize and target regulated sectors, based on environmental impacts to the air, water and soil in Louisiana. In support of this strategy and the legislative mandates at the state level, the division has standard operating procedures and guidelines that are followed to perform the core functions related to environmental protection and public safety.

There has been a concerted effort by all the stakeholders [business, industry, legislators, local government entities, citizens, state agencies] for the past 20 years to ensure that a level playing field exists – it is the only way to ensure that Louisiana will achieve its environmental protection goals in a fair, consistent and practical manner. The activities handled by Surveillance: (1) inspections (approx. 10,000 per year); (2) complaint and spill investigations (approx. 8-9000 per year); and (3) compliance assistance and outreach to small businesses, local/parish governments and citizens on a daily basis, are fundamental in establishing public confidence in our agency.

The Enforcement Division prioritizes the referrals of noncompliance based on those cases which have the potential for the greatest impact on human health and the environment. Violators are classified as either High Priority Violators or Significant non-compliers.

5. Emergency and Radiological Services appears to belong with occupational safety and health at the Workforce Commission.

The recommendation that the Emergency and Radiological Services Division be transferred to a non-environmental, non-technically based state agency brings to the surface many problematic issues:

- SPOC coordinates and communicates with OEC Surveillance, OEC Enforcement, DEQ Underground Storage Tanks and DEQ Records Management. How will this be facilitated in the future?
- SPOC dispatches the Chemical ER and OEC Weekend Surveillance groups to emergencies. How will this be accomplished in the future?
- SPOC processes all notifications to this Agency in accordance with the Environmental Quality Act. How will this be maintained in the future?

- SPOC coordinates with OEC Enforcement personnel coverage for 24 hour hurricane response and utilizes other DEQ personnel for this scheduling. How can this be continued in the future?
 - Radiation Licenses, Inspections and Enforcement must be continued.
 - ERSD will need a maintenance budget that will provide adequate resources to purchase, maintain and calibrate annually both radiation and chemical monitoring equipment.
 - ERSD will need to maintain an adequate number of vehicles and special purpose vehicles for all regional offices (including Baton Rouge) for inspections, incidents, and emergency response.
 - A minimum Number of radiation inspections per year are required by agreement with NRC. This is in an agreement signed by the governor.
 - ERSD would need laboratory services specific to radiation and chemical analysis requirements in order to meet NRC, FEMA and EPA compliance agreements.
 - Chemical Accident Prevention Program (CAPP) does not enforce nor is knowledgeable about OSHA worker injury issues.
 - LDEQ's Radiological Emergency Preparation and Response Program (REPR) is the Lead State Agency for Radiological Emergency Response and Preparedness activities for Louisiana. REPR reviews emergency planning procedures, trains local responders to nuclear emergencies and conducts drills to demonstrate capability to respond to radiological emergency incidents.
 - The operation of the three (3) nuclear power plants (NPP) associated with Louisiana require that emergency planning for offsite response organizations (ORO's) meet the Homeland Security Exercise and Evaluation (HSEEP) procedures accepted by the Federal Emergency Management Agency (FEMA) and the Nuclear Regulatory Commission (NRC) regulations.
6. **Air, Water, Hazardous Waste, Solid Waste Permits: The permitting process appears to take a long time (300 processing days) involving major delays for potential investors. The cost per permit issued figure would be of value for all of these programs.**

The 300 "processing day" limit is a regulatory *maximum*. The majority of actions are finalized by Office of Environmental Services in a much shorter timeframe. There are currently other regulatory deadlines that are less than 300 processing days (i.e., LAC 33:III.525.B.5) and internal (non-regulatory based) targets imposed by DEQ itself. DEQ's 300 processing day rule is, in some cases, significantly more stringent than corresponding federal regulations. In FY08-09, DEQ averaged 105 processing days from permit applications submitted for all environmental media to final action.

For example, in the air rules, according to 40 CFR Part 70, a permit for a new major source or substantial modification should be issued within eighteen months. For example, final action was taken on 3171 items processed by the Air Permits Division (APD) in FY 08-09. Based on APD's budget of \$4,520,403, that is a cost of \$1425.54 per action. First quarter FY 09-10 data indicates **an average of 60 processing days from application to final action.** DEQ has been recognized by EPA for its timely issuance of air permits, and for leadership in the RCRA (Hazardous Waste) program.

Under this administration, in order to even provide more timely solutions for business, DEQ has fully committed to an Expedited Permit Processing Program which is used as an

economic incentive “carrot” by the Louisiana Department of Economic Development. This program *does* afford business a fast track for the process for which they voluntarily compensate DEQ for overtime by employees to complete the process. Also, DEQ is aggressively pursuing development of regulatory permits for general permits for minor sources. This streamlining effort should further reduce the amount of time between application and final action. Even with the loss of twelve (12) full-time positions in permitting, DEQ has committed, through the use of various management and work tracking tools, general permits and regulatory permits, and timeframes for permit issuance timeframes, to significantly shorten for qualifying activities. The Department is currently nearing completion of its first online permit application, with more to follow. We estimate that timeliness of permit processing will further shorten permit timeframes, not only for the affected activities, but for other activities as well, as resources savings are realized.

DEQ is unaware of the data underlying the recommendation environmental permitting time frames constitute “major delays.” This statement implies similar permits may be obtained from other state agencies in a more expeditious manner and DEQ has not been afforded the opportunity to review any such information. In fact, DEQ permitting efficiency efforts, under this administration, have seen highly successful and environmentally sound results with Marathon, Con Agra, ADA-ES, Jeld-Win, Tembec, and V-Vehicles.

7. Water, Air, Quality Analysis: This activity could be contracted out – maybe to a university or other skilled operator with analytical equipment and competent staff.

DEQ is unaware of the data supporting this recommendation, and would welcome a full review of it. Some issues which will arise from contracting may include the following: (1) Water quality monitoring is a requirement of the CWA. Critical to the delegation EPA grants Louisiana is the assurance monitoring is done consistently, efficiently and without bias; (2) Since the Louisiana water network covers some 487 “subsegments,” sampled every 4 years and certain “subsegments” require increased monitoring, based on water ambient standards and impairment criteria, multiple outside contracts would be necessary to complete the work; (3) multiple operators may open the door to inconsistencies and poor quality and this will only increase the costs of the operations, not lessen them; and (4) any defects in contractor services may threaten Louisiana’s delegated authority from EPA to administer the CWA.

8. Any Laboratory owned by the department should be part of the study of state owned laboratories and the efficiency of their utilization.

There are currently three requests for proposals (RFP) at DOA concerning the outsourcing of air, water and soil laboratory services. DEQ commissioned Astrix Technology Group in early 2008 to conduct a laboratory cost-benefit analysis to determine the operational efficiency of the DEQ Laboratory Services Division (LSD) housed in the DEQ Laboratory at 1209 Leesville Avenue, Baton Rouge, Louisiana. The Study was designed to evaluate the financial health of the LSD. The evaluation was focused on developing an income statement using the number and type of tests conducted. FY08 income statement revealed losses in excess of \$3 million while costs of outsourcing all analytical testing would have been about \$2.2 million. Therefore, DEQ chose to attempt to outsource all analytical testing utilizing the RFP process.

DEQ is also in the process of relinquishing the laboratory facility to the Department of Health and Hospitals (DHH). This alone will save the DEQ about \$1.5 million in rental charges. Personnel will be allocated to core functions of the department such as permitting and water quality.

9. Underground Storage tank inspection could be contracted out.

DEQ has reviewed the possibility of contracting out all of our UST Compliance Evaluation Inspections (CEI) in accordance with streamlining ideas. We presently have approximately 4500 gas stations that require inspection. Our staff conducts approximately 800 of these inspections per year at a cost of \$325 per inspection. The numbers of these inspections have been our primary performance indicator for many years. The recent passing of the Energy Act now requires us to inspect each station every three years, or approximately 1500 per year. As a result, we contracted several years ago with AAA tank testers to do approximately 700 inspections per year at a cost of \$196,700 per year. The original contract was given a no-cost extension twice. It will come up for bid again this year and the cost will probably go up. If we decided to contract all 1500 inspections per year at the existing cost, we could extrapolate the existing contract cost to \$421,500.

We have limited funding for this from the federal government through the UST Compliance grant. The number of inspections conducted is based upon the amount of funding and the bid price (cost per inspection, lowest qualified bidder). We apply approximately \$200,000 of the UST compliance grant toward Contractor inspections. However, we do expect the cost to increase. If we estimate a 25% increase, that would bring us to \$526,875 per year. In FY07, we contracted out compliance inspections at \$650/inspection. We received an extremely low bid (\$275/inspection) in FY08 and have extended the contract twice since then. Under state bid law, FY10 is the last time DEQ can extend at that price. In FY11, we will be required to put this contract back out for bid. The average bid (without the lowest and the highest) in FY08 was \$875/inspection. This only includes the initial physical inspection of the site, DEQ personnel are required to complete the rest of the process which may include civil enforcement and fiscal office personnel.

Some Questions Raised Concerning potential savings:

1. **There seems to be discrepancy between the amount disclosed and the amount appropriated in either FY 08 of \$129 million or FY 09 \$156 million. Some of this might be pass through money?**
 - The FY08 \$129 million represents the **actual** amount of money spent by the department for that fiscal year. The amount **budgeted** for FY08 was \$160 million.
 - The FY09 \$159 million represents the amount **budgeted** in that fiscal year while the **actual** amount spent in FY09 was \$118 million.
 - Several factors account for the difference in the budgeted and actual amounts, i.e. the amount spent in special statutorily dedicated funds was less than budgeted due

to the fluctuation in the amount of reimbursements requested by the applicants, budgeting for fluctuating fuel prices, and fluctuations in the amounts completed in multi-year contracts paid with federal grants.

- \$500,000 of DEQ's budget is pass through money from the Legislature for the Louisiana Rural Water Association.

2. It is difficult to find savings except for the contracting out of some activities and rationalization of laboratory facilities, if they exist.

Under this administration, DEQ has worked diligently to enact fiscal efficiencies since FY09 to maximize its operational capabilities. Specifically, DEQ has undertaken the following:

- The DEQ fleet operations were streamlined during FY09 by reducing overall fleet size by 10%. There is a projected cost savings in the amount \$162,000 to be achieved by reduced gasoline purchases and maintenance of vehicles. This amount is estimated as actual data is being compiled during FY10.
- Beginning in FY09, the department reduced 39 positions for an annualized savings of \$2,971,983. During FY09, the department reduced an additional 20 positions which equated to an estimated annual savings of \$1,439,134. Total personnel cost savings (including Related Benefits) is \$4,411,117.
- In FY09, DEQ realized a savings of \$894,000 by reducing acquisitions, closure of the Mandeville Office (6 months), and no new vehicle purchases. In FY10, DEQ realized savings of \$3.2 million by reducing acquisitions, professional services, and the annualized cost of closure of the Mandeville Office. The department made no new vehicle purchases, and a reduction in operating automotive supplies due to previous streamlining efforts.
- There are currently three requests for proposals (RFP) at DOA concerning the outsourcing of air, water and soil laboratory services. DEQ commissioned Astrix Technology Group in early 2008 to conduct a laboratory cost-benefit analysis to determine the operational efficiency of the DEQ Laboratory Services Division (LSD) housed in the DEQ Laboratory at 1209 Leesville Avenue, Baton Rouge, Louisiana. The Study was designed to evaluate the financial health of the LSD. The evaluation was focused on developing an income statement using the number and type of tests conducted. FY08 income statement revealed losses in excess of \$3 million while costs of outsourcing all analytical testing would have been about \$2.2 million. Therefore, DEQ chose to attempt to outsource all analytical testing utilizing the RFP process.
- DEQ is also in the process of relinquishing the laboratory facility to the Department of Health and Hospitals (DHH). This alone will save the DEQ about \$1.5 million in rental charges. Personnel will be allocated to core functions of the department such as permitting and water quality.

3. Office of Management and Finance (OMF) has a budget of about \$30 million, which seems very high out of an operating total budget of \$105 million. 30% of income being expended in main office seems high and should provide savings.

- The reason the budget for the Office of Management and Finance (OMF) appears high is the budget for this office incorporates the budget for some of the statutory dedicated

funds of the department. This amount includes the Motor Fuel Underground Storage Tank Trust Fund and the Waste Tire Management Fund and a portion of the Municipal Facilities State Revolving Loan Fund in addition to the operating expenses to administer the office.

- FY09 expenditures for OMF was \$30.2 million, \$10.6 million was for reimbursements from the Louisiana Waste Tire Management Fund for tire processors, \$13.3 million was for reimbursements from and the administration of the Motor Fuel Underground Storage Tank Fund and \$6.3 million for the operating expenses of the office.

4. Where permits issued are for a business this should be treated as a cost of doing business and fully recovered.

The fees represent the cost of doing business in the state and are recovered by the department. Permit applicants are assessed fees based on regulatory requirements which are specific to each media. The federal government also provides funding through various environmental grants and which are renewed annually. The department is largely self-funded by these fees and EPA grants.

a. Where the permit is for a territorial authority, they also should be subjected to full cost recovery.

All publicly owned facilities are also required to pay fees in accordance with the regulations and are not exempt.

5. Business Inspections should also be full cost recovery

In addition to permit fees, facilities are also assessed annual maintenance and surveillance fees. These fees cover costs of routine inspections and enforcement activities. The department also receives money from the federal government in the form of grants.

a. Permits and Inspections savings could be in the order of \$17.1 million.

DEQ is not aware of the underlying data used to support this recommendation.

Recommendations regarding DEQ structure change:

The recommendation DEQ be converted into an environmental policy agency charged with the development of environmental values for the State of Louisiana and the administration of operational activities be shifted to a new Department of Conservation.

This initiative presented several unanswered questions and the department cannot, without a full review of the data supporting such claims, make a fully informed response on this recommendation other than offer the following concerns:

- 1. Funding** – There is no savings in the creation of a new agency to the state of Louisiana because the funding for DEQ’s activities comes from federal grant funds and permit and annual monitoring fees paid by the regulated community which account for the cost of issuing permits and compliance inspections. Enforcement costs are a component of most penalty actions.

DEQ has taken significant steps to remove itself from State General Fund by the FY11 through cost-cutting and efficiency reforms. Currently, DEQ receives minimal general state funds and in the next fiscal year will be budgeted to receive none. DEQ thus relies upon self-generated funds derived from fees and federal funds. Both of these funds are tied directly to operational and programmatic activities of the department, not policy activities.

This *new* DEQ would have no funding source other than to request general fund dollars to support its policy efforts.

- 2. Agency Authority & Responsibility** –The fundamental question of which agency will answer to whom in the bifurcation of policy and its administration is an unanswered question which will lead to inherent conflict. Any possible shortcoming in meeting Federal obligations in policy and operations by the two agencies also begs the question in whose responsible hands will final questions rest? This question of who will determine and ensure state operational activities meet EPA standards is one of grave importance and must be answered, *with the concurrence of EPA*, prior to this re-establishment of departmental responsibilities. DEQ has performed its duty of both policy and implementation by providing specialized consistent oversight of the environmental programs it is charged to administer.

- 3. Communication and Operational Efficiencies**—How will these two departments communicate and ensure the environmental goals set by DEQ will be translated into the operational plans of the Department of Conservation? Under this administration, DEQ has restructured internal divisions to maximize services and streamline activities. DEQ currently realizes great efficiencies among the operational groups of the department, but is continually reviewing its own processes and looking for any opportunities for improvement. Finally, in 2003, DEQ underwent a departmental wide re-engineering to maximize operational activities.

Merging the operational activities into a mega-agency will very likely create its own “conflict of interest” scenarios as identified by the legislature in the mid-80’s and chose the present structure of the four key agencies to remove certain conflicts and allow for independent and consistent application of the environmental rules for specific sectors. The proposal to separate policy from operations will lead to less consistency and less effective implementation of the environmental quality standards. This separation of function between two agencies makes it less “user friendly” for the regulated community and the public. Customer service to these stakeholders would be diminished.

- 4. Concerns over support from EPA**—The operational activities of the department are federally delegated. Federally delegated programs cannot be moved to another state office without EPA involvement, statutory and regulatory changes. Development and approval of Federal delegation packages takes years. The environmental regulations are initially established and promulgated on a national level by EPA. A delegated state then promulgates these regulations on a state level either identically, or in a more stringent manner, in accordance with state's government policies.
- 5. Legislative Support** —DEQ's self generated funds are statutory dedications and any change to these funds requires legislative approval
- 6. Current DEQ Policy Working Groups** - DEQ does not have a formal policy division. The department recommends, shapes and implements policy through mission based activities, such as working groups, boards and panels. Examples of these include: (1) Louisiana Environmental Advisory Panel; (2) Hurricane Debris Management Policy Working Group; (3) Baton Rouge Clean Air Coalition; (4) Solid Waste Regulations Working Group; (5) Title V Air Permits Work Group; and the (6) Waste Tire Program Working Group.

Recommendations for a New Department of Conservation:

Recommendations on the creation of the *new* Department of Conservation were as follows:

- A. It would be formed around the existing Department of Natural Resources as the core of the new department. The Commission on Coastal Restoration would be incorporated into the new department for resources and support services but would retain its statutory independence for operational matters. The function of Fisheries would transfer to Agriculture, creating a Department of Agriculture, Forestry and Fisheries. Given the commercial fishery operations in the state and the growth in aquaculture, this seems to be a more logical structure. All other environment related conservation activities would also transfer to the new department.**

Based on the information provided for these recommendations, DEQ cannot give an informed response to this recommendation. The department requests that information be provided, such as the economic analysis used to make this recommendation and how this recommendation will provide better services to the citizens of the state, which would allow us to make an informed response.

- B. The water and soil conservation activities currently in the Department of Agriculture would be transferred to the new department.**

Currently, a partnership between the DEQ and the Department of Agriculture and Forestry (DAF) is being effectuated for resource and information sharing that will allow a savings to the department and a greater ability for DEQ to DAF to carry out its core missions throughout the state. The DAF has agreed to rent office and warehouse space

to DEQ at a reduced rate which is part of a statewide comprehensive plan to be fully implemented within the coming year. DAF has also agreed to provide fuel and fleet maintenance services to DEQ at a reduced rate to resulting in further savings to the department. The department has concerns how this recommendation will affect the ongoing partnerships between our departments.

C. The Wildlife function of Wildlife and Fisheries would go to the new department.

Recently, DEQ has created a partnership with the Department of Wildlife and Fisheries (DWF) to combat illegal dumping throughout the state in order to maximize criminal investigative resources. Plans for these efficiencies currently undertaken between offices in the department would certainly be placed on hold.